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**UNITED STATES DISTRICT COURT**

**DISTRICT OF NEVADA**

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11 ■ DON HELLMING

13 | Respondents

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14 On January 5, 2006, the court entered an Order dismissing the habeas corpus petition  
15 in this case (docket #42). Judgment was entered on the same day (docket #43).

On February 3, 2006, petitioner filed a Notice of Appeal (docket #45) and an Application for Certificate of Appealability (docket #46). Respondents have filed an opposition to the application for a certificate of appealability (docket #50).

19 Petitioner paid the filing fee for this action, but has applied to proceed *in forma*  
20 *pauperis* on appeal (docket #49). Based on the financial information he provides, it appears that he  
21 does not have the means to pay the full filing fee. He shall be granted leave to proceed *in forma*  
22 *pauperis* on appeal.

23                 The court will deny petitioner's application for a certificate of appealability. The  
24 standard for the issuance of a certificate of appealability calls for a "substantial showing of the denial  
25 of a constitutional right." 28 U.S.C. §2253(c). The Supreme Court has interpreted 28 U.S.C.  
26 §2253(c) as follows:

1           Where a district court has rejected the constitutional claims on  
2 the merits, the showing required to satisfy §2253(c) is straightforward:  
3 The petitioner must demonstrate that reasonable jurists would find the  
4 district court's assessment of the constitutional claims debatable or  
5 wrong. The issue becomes somewhat more complicated where, as  
6 here, the district court dismisses the petition based on procedural  
7 grounds. We hold as follows: When the district court denies a habeas  
petition on procedural grounds without reaching the prisoner's  
underlying constitutional claim, a COA should issue when the prisoner  
shows, at least, that jurists of reason would find it debatable whether  
the petition states a valid claim of the denial of a constitutional right  
and that jurists of reason would find it debatable whether the district  
court was correct in its procedural ruling.

8         *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); *see also James v. Giles*, 221 F.3d 1074, 1077-79  
9 (9th Cir. 2000). Petitioner has not met this standard.

10         The court finds that jurists of reason would not find debatable the question whether  
11 petitioner's habeas corpus petition was filed within the time allowed by the one-year statute of  
12 limitations imposed by the Antiterrorism and Effective Death Penalty Act (AEDPA) or that he is  
13 entitled to equitable tolling of the limitations period for three separate periods of time, contending  
14 his mental illness prevented him from filing his federal habeas corpus petition.

15         Following an evidentiary hearing, this court concluded that, while Scott did suffer  
16 from some mental health disability, the disability was not sufficient to have prevented him from  
17 filing his federal petition. The evidence presented demonstrated that Scott was able to pursue legal  
18 action. He simply chose the wrong action to pursue. Scott's mental health did not make it  
19 impossible to timely file his federal action. The Certificate of Appealability shall be denied.

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1           **IT IS THEREFORE ORDERED** that petitioner's application for issuance of a  
2 certificate of appealability (docket #46) is **DENIED**.

3           **IT IS FURTHER ORDERED** that petitioner's application to proceed in *forma*  
4 *pauperis* on appeal (docket #49) is **GRANTED**.

5           Dated this 27<sup>th</sup> day of March, 2006.



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8           LARRY R. HICKS  
9           UNITED STATES DISTRICT JUDGE  
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